

APPENDIX C

**COUNTY OF HONOLULU ORDINANCE NO. 07-32 AND
UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING**



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 07-32
BILL 001 (2007), CD1

A BILL FOR AN ORDINANCE

TO REZONE LANDS SITUATED AT 548 KAPAHULU AVENUE BETWEEN CAMPBELL AVENUE AND HERBERT STREET, KAPAHULU, HONOLULU, OAHU, HAWAII, (AMENDING PORTION OF ZONING MAP NO. 3, MOILIILI-KAIMUKI, ORDINANCE NO. 86-106).

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Land situated at 548 Kapahulu Avenue between Campbell Avenue and Herbert Street, Kapahulu, Honolulu, Oahu, Hawaii, hereinafter described, is hereby rezoned from R-5 Residential District to B-2 Community Business District with a 40-foot height limit. The boundaries of said Community Business District shall be described as shown on the map attached hereto, marked "Exhibit A-1" and made a part hereof, and further identified as Tax Map Key: 2-7-036: 004 and 016.

SECTION 2. A Unilateral Agreement marked "Exhibit B" is by reference incorporated herein and made a part hereof.



CITY COUNCIL
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HONOLULU, HAWAII

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SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Barbara Marshall (BR)

DATE OF INTRODUCTION:

January 3, 2007
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Don L. Kirtland
Deputy Corporation Counsel

APPROVED this 20th day of July, 2007.

Mufi Hannemann
MUFU HANNEMANN, Mayor
City and County of Honolulu

(OCS/033007/ct)

0500-046

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE 06.01.2007 TIME 12:00 PM
DOCUMENT NO. 2007-04010

LAND COURT SYSTEM)
REGULAR SYSTEM)
Return by Mail () Pickup (X) To:

DEPT. OF LAND AND NATURAL RESOURCES
LAND DIVISION

Total Number of Pages: 7
Tax Map Key No. (1) 2-7-036:04 & 16

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for
Conditional Zoning
PARTY TO DOCUMENT: State of Hawaii, Department of Land and
Natural Resources

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (hereinafter "Unilateral Agreement"),
made this 1st day of June, 2007, by the STATE
OF HAWAII (hereinafter "Declarant"), by its Board of Land and
Natural Resources, whose address is 1151 Punchbowl Street, Room
130, Honolulu, Hawaii 96813,

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of
that certain parcel of land situate in Waikiki, City and County
of Honolulu, State of Hawaii, consisting of approximately 24,407
square feet, described as Tax Map Key Nos. (1) 2-7-36:04 and 16,
and more particularly described in Exhibit A attached hereto and

EXHIBIT A

made a part hereof (the "Land"), and desire to make the Land subject to this Unilateral Agreement; and

WHEREAS, the City Council ("Council") of the City and County of Honolulu ("City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, related to conditional zoning, is considering a change in zoning under the LUO of the Land from R-5 Residential District to B-2 Community Business District with a 40-foot height limit (the "zone change"); and

WHEREAS, a public hearing regarding the zone change, Bill 1 (2007), was held by the Council on January 21, 2007; and

WHEREAS, the Council recommended by its Zoning Committee Report No. 223 that said zone change be approved, subject to the following conditions contained in this Unilateral Agreement to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the zone change (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant hereby covenants and declares as follows:

1. **Revised Traffic Impact Analysis Report (TIAR).** Prior to building permit approval a revised Traffic Impact Analysis Report (TIAR) shall be submitted to and approved by the City Department of Transportation Services and the City Department of Planning and Permitting. Both departments should be consulted regarding the scope of the TIAR. The TIAR shall discuss the result of discussions with the owner of the adjacent Prudential Locations property to secure an access easement.
2. **Disclosure.** The Declarant shall inform all prospective purchasers or lessees of the Land of all of the following:
 - a. The Land is subject to possible errant golf balls from the Ala Wai Golf Course. Design of the development of the Land should account for the possibility of such errant golf balls.
 - b. Mowing and maintenance of the Ala Wai Golf Course may result in noise and other impacts.
3. **Mature Trees.** At the time of the submittal of the Diamond Head Special District permit application or prior to tree removal, clearing, and/or grubbing, whichever occurs first, the Declarant shall submit to the Department of Planning and Permitting for approval a map showing all existing trees having a

trunk diameter greater than six inches, their species, canopy spread, and tree height.

4. Compliance with Other Governmental Requirements.

The Declarant shall be responsible for ensuring that the final plans for the proposed development of the Land shall comply with all applicable Land Use Ordinance and other governmental agencies' provisions and requirements.

5. Annual Reports.

On an annual basis, the Declarant shall submit a written status report to the Department of Planning and Permitting documenting its satisfaction of and/or describing its progress toward complying with each condition of this Unilateral Agreement. The status report will be submitted by December 31 of each year until such time as the Department of Planning and Permitting has determined that all conditions of this Unilateral Agreement have been satisfied. If a status report is not submitted within the time specified, the Department may defer the processing of permits until a status report is submitted.

6. Noncompliance with Conditions.

In the event of noncompliance with any of the conditions set forth herein, the Director of Planning and Permitting shall inform the Council and may institute action to rezone the Land, seek civil enforcement, or take appropriate action to terminate or stop the development of the Land until applicable conditions are met. Failure to fulfill any conditions of this Unilateral Agreement may be grounds for revocation of the permits issued under this zoning and grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant hereby makes the following additional declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested zone change and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set

forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

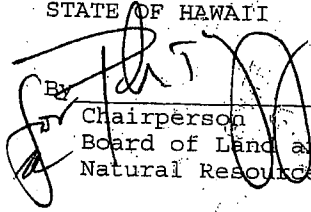
That if there are any conflicts between this Unilateral Agreement and any applicable public land laws or statutes, the provisions of the public land laws or statutes shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Unilateral Agreement shall run with the land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City shall have the right to enforce this Unilateral Agreement by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Unilateral Agreement, such petition to be processed in the same manner as petitions for zone changes.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and executed this Unilateral Agreement and Declaration for Conditional Zoning on the day, month and year first above written.

STATE OF HAWAII

Approved by the Board
of Land and Natural
Resources at its meeting
held on March 9, 2007.

By 
Chairperson
Board of Land and
Natural Resources

Declarant

APPROVED AS TO FORM:


Deputy Attorney General

Dated: 6/1/07



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 24,024

April 29, 2005

COMMERCIAL LEASE SITE

Waikiki, Honolulu, Oahu, Hawaii

Being a portion of Royal Patent 4889, Land Commission Award 35, Fort Land, Apana 2 to Mahuka conveyed to the Territory of Hawaii by Trustees under the Will and of the Estate of Bernice Pauahi Bishop, deceased, by deed dated June 14, 1921 and recorded in Liber 605, Page 20 (Land Office Deed 2033).

Beginning at the northeast corner of this parcel of land, at the southeast corner of Lot A as shown on Map 2 of Land Court Application 1542 and on the northwest side of Kapahulu Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "DIAMOND HEAD 2" being 6669.17 feet North and 781.07 feet West, thence running by azimuths measured clockwise from True South:-

1. Along the northwest side of Kapahulu Avenue on a curve to the right with a radius of 490.00 feet, the chord azimuth and distance being:
20° 32' 44" 149.16 feet;

Exhibit A

C.S.F. No. 24,024

April 29, 2005

2. 29° 18' 98.00 feet along the northwest side of Kapahulu Avenue;
3. 119° 18' 110.00 feet along Diamond Head Booster Station, Governor's Executive Order 2569;
4. 209° 18' 211.44 feet along Ala Wai Golf Course and Park Site, Governor's Executive Order 3885;
5. 278° 02' 30" 93.68 feet along Ala Wai Golf Course and Park Site, Governor's Executive Order 3885 and Lot A as shown on Map 2 of Land Court Application 1542 to the point of beginning and containing an AREA OF 24,407 SQUARE FEET.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: 

Reid K. Siarot
Land Surveyor

gm

Compiled from CSFs 23162,
23218 and other Govt. Survey
Records.

